

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
CIVIL APPLICATION NO. 6497 OF 2016 IN
FIRST APPEAL ST. NO. 13151 OF 2016

01 The State of Maharashtra,
through the Collector, Osmanabad.

02 The Executive Engineer (Deleted),
Minor Irrigation Division,
Zilla Parishad, Osmanabad.

03 The Executive Engineer,
Irrigation Division, Osmanabad.

Applicants

Versus

01 Shahaji Sayaba Shaikh,
age: 34 years, Occ: Agril.,
R/o Bhavanwadi (Sukta),
Tq. Bhoom, District Osmanabad.

02 Shabbir Sayaba Shaikh,
age: 40 years, Occ: Agril.,
R/o as above.

03 Nazir Sayaba Shaikh,
age: 27 years, Occ: Agri.,
R/o as above.

04 Rashid Sayaba Shaikh,
age: 24 years, Occ: Agri.,
R/o as above.

05 Bashir Sayaba Shaikh,
age: 30 years, Occ: Agri.,
R/o as above.

Respondents

Mr. S.P. Deshmukh, AGP for applicants.

Mr. S.A. Wakure, advocate for respondents 1 and 5.

CORAM : M.S. SONAK, J.
DATE : 31st JANUARY, 2018

ORAL ORDER:

1 This Civil Application seeks condonation of delay of 1630 days in instituting the appeal against judgment and award dated 03.08.2011 made by the Reference Court.

2 The so called explanation for delay is in paragraphs no.2, 3 and 4, which reads as follows:

“2 That, the Applicant say and submit that the Law and Judiciary Department has scrutinised the proposal and arrived at conclusion to prefer appeal and thereafter vide communication dated 13.10.2011 informed the Government Pleader, High Court Bench at Aurangabad for the same. After receipt of the said proposal by the office of the Government Pleader, the same was processed for the purpose of drafting and accordingly First Appeal was drafted.

3 The applicant say and submit that in the meanwhile letters were sent on 19.10.2011 for certified copies and typed copies of judgment and Award/order, difference chart, court fees, etc. Thereafter, after receiving appropriate copies and after making compliance for filing appeal, first appeal has been filed. However there occurred some delay on account of above said procedural aspect of the matter, which Government machinery is required to follow. Therefore, the delay is not deliberate or intentional, however, same is circumstantial one.

4 The Applicant say and submit that the applicants have strong meritorious case and every hope to succeed in the same. Therefore, in view of the principles laid down in reported judgment of Hon'ble Apex Court (AIR 1987 SC 1353) first appeal deserves to be considered on its own merit and as such delay needs to be condoned in the interest of justice.

3 The aforesaid reasoning does not constitute sufficient cause for explaining inordinate delay of 1630 days. All that is stated that the delay has taken place on account of "procedural aspects" and thereafter it is pleaded that the delay is not intentional or deliberate but the same is circumstantial one. On the basis of such explanation, delay, which is inordinate and spanned over four years, cannot be condoned. The decision, to which reference is made in the application seeking condonation of delay, states that each day's delay need not be condoned. However, the said decision is not an authority for the proposition that the delay in every case, however inordinate and whatever the explanation, has to be condoned.

4 The averments in the application seeking condonation, are quite casual and unverifiable. On the basis of such routine averments, the State, cannot, in every case, plead that delay should be condoned, because it is an impersonal agency, which is required to act through its officers. The statements that files had to be moved from table to table or that pressure of work or that some time is always required for decisions, which have to be taken at different levels are reasons too vague to merit any acceptance, particularly when we are dealing with case of land losers, who have been deprived of compensation for several years.

5 In **Pundlik Jalam Patil (Dead) By Lrs. vs. Executive Engineer, Jalgaon, Medium Project and anr.** [(2008) 17 SCC 448], the Hon'ble Supreme Court has held that pursuing stale claims and multiplicity of proceedings in no manner subserves public interest. These public interest parameters ought to be kept in mind by the courts while exercising the discretion dealing with the application filed under section 5 of the Limitation Act. Dragging the land-losers to courts of law years after the termination of legal proceedings would not serve any public interest. Settled rights cannot be lightly interfered with by condoning inordinate delay without there being any proper explanation of such delay on the ground of involvement of public revenue. This serves no public interest. Though, the State or its instrumentalities seeking condonation of delay may be entitled to certain amount of latitude, but the law of limitation is same for citizens and for governmental authorities. It would be a different matter where the Government makes out a case where public interest was shown to have suffered owing to acts of fraud or collusion on the part of its officers or agents and where the officers were clearly at cross purposes with it. In a given case, if any, such facts are pleaded and proved they cannot be excluded from consideration. In the case with which we are concerned, no such facts have been either pleaded or proved.

6 In **Registrar of Companies vs. Rajshree Sugar & Chemicals Ltd. and ors.**, [2(2000) 6 SCC 133], the Hon'ble Supreme Court held that though some latitude has to be shown to the Government in deciding the question of delay, that does not give a license to the officers of the Government to shirk their

responsibility to act with reasonable expedition.

7 In **Esha Bhattacharjee vs. Managing Committee of Raghunathpur afar Academy & ors.**, [3(2013) 12 SCC 649], the Hon'ble Supreme Court has held that an application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a *lis* on merits is seminal to justice dispensation system. Further, the Hon'ble Supreme Court has held that an application for condonation of delay should not be dealt with in a routine manner on the basis of individual philosophy which is basically subjective. The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.

8 In **Postmaster General and Ors. vs. Living Media India Limited and anr.**, [4(2012) 3 SCC 563], the Hon'ble Supreme Court declined to condone the delay of 427 days in filing the special leave petition by observing that department cannot take advantage of various earlier decisions where a very liberal approach was adopted when it came to condone delay on the part of Government agencies. The Hon'ble Supreme Court observed that the claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government. It is the right time to inform all the

government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was *bona fide* effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government department. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, the Hon'ble Supreme Court held that, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay.

9 In **Basawaraj and anr. vs. Special Land Acquisition Officer, [(2013) 14 SCC 81]** the Hon'ble Supreme Court went on to observe that the law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of *bona fide* on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any

condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.

10 The Division Bench of this Court in **State of Maharashtra and ors. vs. Vithu Kalya Govari and ors., [2008(6) Mh.L.J.239]** has observed that the State is not expected to be negligent or to take no action for years and let the matters become time barred on account of its negligence and inaction. The usual reason of "official hassle" or "approval at different levels" is hardly sufficient to justify condonation of delay of about two years. In law, advantage has accrued to the non-applicants claimants and the same cannot be withdrawn in a mechanical manner and that too without any sufficient cause being shown by the applicants. Despite, awards/judgments of the Courts, which have attained finality, the claimants are not permitted to receive compensation in respect of their lands, which came to be compulsorily acquired, is itself, sufficient prejudice to them. Therefore, before any delay can be condoned and the claimants subjected to further prolonged litigation, the onus to show sufficient cause lies upon the applicant-State.

11 Applying the aforesaid principles to the facts of the present case, there is no case made out to condone the delay of 1630 days in instituting the appeal.

12 The application is, therefore, dismissed. As a consequence, the appeal and other Civil Applications therein are also stand disposed of.

(M.S. SONAK)
JUDGE